

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

KELVIN FELTON

Petitioner,

vs.

JOHN MARSHALL, Warden; EDMUND G.  
BROWN, JR., Attorney General of the State  
of California,

Respondent.

CASE NO. 09cv0732 JM(POR)

ORDER GRANTING IN PART AND  
DENYING IN PART MOTION FOR  
CERTIFICATE OF  
APPEALABILITY

Petitioner moves for the issuance of a certificate of appealability to appeal the denial of his petition for habeas corpus brought pursuant to 28 U.S.C. §2254. The court may issue a certificate of appealability “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. §2253(b)(3). As noted in Hayward v. Marshall, 603 F.3d 546, 553 (9<sup>th</sup> Cir. 2010):

The standard for a certificate of appealability is lenient. [A petitioner] need only ‘sho[w] that reasonable jurists could debate’ the district court’s resolution or that the issues are ‘adequate to deserve encouragement to proceed further.’ This showing requires ‘something more than the absence of frivolity,’ but something less than a merits determination (which we lack jurisdiction to make, absent a certificate of appealability).

The court grants the certificate of appealability with respect to the conviction for making a criminal threat against Officer Ashton (Ground One). While the sufficiency of evidence challenge to this conviction presents a high hurdle for Petitioner to overcome, in light of the lenient standard adopted by the Ninth Circuit, the court concludes that reasonable jurists “could debate” whether there

1 is sufficient evidence to support this conviction.

2 With respect to Petitioner's other two claims, the court concludes that he fails, even under a  
3 lenient standard, to establish the denial of constitutional rights. See 28 U.S.C. §2253(b).

4 In sum, the court grants a certificate of appealability with respect to the sufficiency of evidence  
5 claim (Ground One) and denies the motion with respect to the judicial bias and ineffective assistance  
6 of counsel claims (Grounds Two and Three).

7 **IT IS SO ORDERED.**

8 DATED: October 25, 2010



9  
10 Hon. Jeffrey T. Miller  
United States District Judge

11 cc: All parties

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